viously been done. The author puts himself in the position of a trustee in bankruptcy and considers the proper course for such an official to pursue in the various contingencies that may arise. The author has had large practical experience in bankruptcy matters, and his treatise cannot fail to be valuable to trustees and their legal advisers. Especially on matters of practice, where it is not always easy to find statements in the decisions pointing out the proper course of procedure, his advice is helpful. As he says in his preface his aim is to furnish a safe guide for trustees, even though this may mean sometimes taking precautions not always deemed necessary; and his book in considerable measure carries out the design the author has expressed.

In some respects, however, the book is open to a criticism, to which it may be added most if not all other American treatises on bankruptcy are also open. American writers on bankruptcy act on the assumption that a satisfactory treatise on the subject can be produced, which shall be based exclusively on the decisions of courts of bankruptcy, and moreover almost wholly on American decisions under the present statute. In fact the law of bankruptcy involves as part of itself a large amount of substantive law which also finds a place under other topics, and requires for its satisfactory treatment a knowledge of these other topics. An illustration of what is meant may be taken from the book under review. The subject of what property passes to the trustee is properly included as an important chapter, and in this chapter the right of a defrauded seller to reclaim from the trustee property fraudulently acquired by the bankrupt is stated and what amounts to fraud is discussed. Such questions constantly arise in bankruptcy, and reference to them cannot be omitted from a treatise on bankruptcy; but the law of fraud has not been wholly or even chiefly settled in bankruptcy courts, and an attempt to discuss it exclusively on the basis of the decisions of Federal courts in bankruptcy matters is certain to be unsatisfactory. Thus not only is the entire discussion of the matter meagre and without reference to most of the authorities which should be cited, but the author is led on page 143 to suppose that a rule peculiar to Pennsylvania has a wider scope; and on page 146 he states that "If the bankrupt honestly, and upon reasonable grounds, believed his representations to be true, the vendor will not be permitted to rescind the sale, even though the representations were true." No authorities whatever are cited for this statement, though there are many decisions on the right to rescind an executed transaction for innocent misrepresentation, and modern authority is opposed to the author's conclusion. Other illustrations might be given of unsatisfactory discussions of matters the proper decision of which demands consideration of principles not to be found in bankruptcy statutes, orders or practice. But where the author is not compelled to go beyond these limits his book is always helpful. S. W.

FEDERAL EQUITY PRACTICE. By Thomas Atkins Street. In three volumes. Edward Thompson Company. 1909. pp. xc, 613; 614–1313; 1314–2104.

This is much more than a mere hand-book for the practitioner; it is a serious and successful treatise upon the subject, designed to state accurately and comprehensively the present state of equity procedure, and to show the changes, already made, and in process of making, at the hands of the federal bench. In form it is not unlike the usual treatises of kindred sort. The text is followed by the Supreme Court Equity Rules, the Ordinances of Lord Bacon, and the English Orders in Equity, promulgated in 1841 (an excellent addendum). There follows a set of forms copied either from actual litigations or from standard manuals, a table of cases and a voluminous index.

The text is as usual divided into sections with copious citations, and with statements of the more important cases incorporated into the body of the text in smaller type with such occasional excerpts from the opinion as are especially tell-

ing. This novel feature of the work is done with much skill and avoids the inaccurate and often misleading habit of merely copying extracts from opinions without giving the reader such a synopsis of the facts as alone gives significance to the words of the judge.

The work is not merely an effort to modernize old treatises, but states *de novo* the present science to which it is devoted. The author does not hesitate to advance his own views, which are usually well considered, and to point out inconsistencies in the decisions. Yet he does not forget that his book is to be a guide to actual practice and that it must enable the reader to conform his proceedings to the existing rules which the courts will in fact enforce. It would be a hard thing to accomplish better than he has done it, the proper combination between accuracy and the spirit of criticism and freedom without which this branch of law must fall into a slavish and unintelligent formalism. The book should serve as a help to judges in new cases, as well as a guide to the bar.

The subject is a peculiarly difficult one to treat satisfactorily, first because it was at the outset a not very consistent adaptation from canonical procedure, and second because it is no longer in this country a living art, as it was practiced in England, and to some extent here, for the first four decades of the nineteenth century. No one need have great experience in the federal courts to realize that as a familiar system of procedure with which the practitioner has become early acquainted, it has ceased to exist. The judges themselves are not accustomed to its use, and are apt to regard the rules as archaic lore full of metaphysical distinctions and pitfalls. The tendency is strong to treat the whole matter as one for the application of common-sense, and that tendency has repeatedly had the most useful results.

It would perhaps not be grossly inaccurate to say that the whole development of equity pleading turned upon the discovery included in the answer and upon the secret taking of testimony by deposition. Mr. Street has very properly first treated the subject as though a discovery were the object of the suit, though, as he at once observes, that has practically ceased to be the case almost universally. Even at its height, equity pleading wholly failed intelligently to master the problem of a discovery and incidentally fell into an irksome habit of verbosity and inaccurate definition of the issues, of which we are now unhappily the heritors after the avowed excuse for it has gone.

Similarly in the taking of evidence, we preserve the immense disadvantage in administering justice which comes from depriving the tribunal of first instance of any chance to see and hear the witnesses, while we have lost the actual restraint upon perjury which existed when the testimony was taken in secret. We seem to have lost the use of such good things as the system was designed to promote, while we have been unable to shake off the cumbersome methods by which they were thought to be secured.

All this must make such a work an ungrateful task, and it makes the more creditable its adequate performance as here. To help a bench and bar, confessedly informed, or uninformed, to an understanding of the real significance of an outworn system, to show that a laborious consistency actually does in some measure obtain, and that perhaps through impatience more and more liberality does creep in, and, as it comes, frees the administration of justice; this is an excellent service until some one can devise a pliant and practical system based upon the theory that after all the only purpose of procedure is to expedite the determination of actual disputes.

It is a strange thing that in this country we should, even with an early start at reforms in legal procedure, still remain tangled in our methods of getting at the real issues. Indeed, the federal courts use this archaic system in practice much more satisfactorily than many of the state courts use their reformed procedure. The truth is that we shall not succeed in emerging, until we realize that the whole matter should be an attitude of mind on the part of the judge, rather than a set of rules. The whole of practice has for its justification only to prevent one party

from surprising the other, and to avoid unnecessary consumption of time, and the judge can do both, if he is fit for his place, and not too much circumscribed by rules which he must observe. In some way our bar has identified the preservation of such rules with the liberty and rights of the citizens, and while it on occasion can indulge in rhetorical praise of the bench as the keystone of our constitution, in practice it too often regards with extreme jealousy and as a usurpation any latitude which the bench may allow itself in disregarding rules of procedure.

The gradual melioration which the federal bench has from time to time effected by using the rules of practice, rather as a guide to proper procedure, than as an absolute condition of any approach to the court, Mr. Street shows very clearly. To those who use the book intelligently, and above all to judges who can apprehend that the whole matter finally lies in their hands, he should be a comfort and a refuge. He shows himself to be a sane observer, willing patiently to comprehend the meaning of the system he has undertaken to set forth, and intelligent enough to observe that it is, even as it stands, a living instrument in the hands of men, usually somewhat unfamiliar with its historic significance, but determined to make it the means for the actual despatch of the business at hand. L. H.

ELEMENTS OF THE LAW OF DAMAGES: A Handbook for the Use of Students and Practitioners. By Arthur George Sedgwick. Second Edition, Revised and Enlarged. Boston: Little, Brown and Company. 1909. pp. xxxv, 368.

The text and the number of citations of this work, which accompanies a second edition of Professor J. H. Beale's Cases on Damages, are considerably enlarged after an interval of thirteen years. "The chief additions relate to Mental Suffering, . . . Death by Wrongful Act, Compensation and Benefits under Eminent Domain Statutes, Interference with Contract and the right to seek Employment, Liquidated Damages, Limitations of Liability," Damages in certain classes of contracts, Conflict of Laws, and Pleading and Practice. Entire new chapters on Eminent Domain, Conflict of Laws, and Pleading and Practice appear in this edition.

Mr. Sedgwick prefers the views of the Rhode Island and later English cases (*Simone* v. *The Rhode Island Co.*, 28 R. I. 186, and *Dulieu* v. *White* (1901), 2 K. B. 669), that recovery can be had for physical injury resulting from fright caused by negligence to the New York and Massachusetts decisions (*Mitchell* v. *Rochester*, 151 N. Y. 107, and *Spade* v. *Lynn & Boston R. R. Co.*, 168 Mass. 285), which leave such a plaintiff remediless. Thus he finds the theory of proximate cause in actions for physical injury produced by negligence at length properly dealt with. He has made no change in his views as to exemplary damages. See 9 HARV. L. REV. 491. The growing importance of the subject of Conflict of Laws justifies the short chapter thereon. Here the author indicates that the law of the place of the performance of the contract should govern the measure of damages and the interest on the amount thereof. The peculiar Massachusetts rule that the rate of interest is determined as a matter of remedy by the *lex fori* (*Barringer* v. *King*, 5 Gray 9) he characterizes very properly as "local and technical." The many positive virtues noted in the first edition have, speaking generally, been perpetuated and enlarged in the new. J. W.

A TREATISE ON THE FEDERAL EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS. By W. W. Thornton. Cincinnati: The W. H. Anderson Company. 1909. pp. xlvii, 410. 8vo.

Mr. Thornton's book consists of two distinct parts — one of one hundred and thirty-nine pages on the Employers' Liability Act of 1908, and one of ninety-